



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,012	10/05/1999	ALBERT K. CHIN	4496	1400

7590 08/22/2006

LENA I. VINITSKAYA
3200 LAKESIDE DRIVE
BUILDING B. 3RD FLOOR
M/S 314
SANTA CLARA, CA 95054

EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
----------	--------------

3734

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

28

Office Action Summary	Application No.	Applicant(s)	
	09/413,012	CHIN, ALBERT K.	
	Examiner	Art Unit	
	Victor X. Nguyen	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-71 is/are pending in the application.
 4a) Of the above claim(s) 36,45,51,61 and 67-71 is/are withdrawn from consideration.
 5) ☒ Claim(s) 34,35,37-44 and 46-50 is/are allowed.
 6) ☒ Claim(s) 52,53,55-60 and 62,63,65-66 is/are rejected.
 7) ☒ Claim(s) 54 and 64 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 52-53,55-60 and 62,63 and 65-66 are rejected under 35 U.S.C. 102 (b) as being anticipated by Klein et al (U.S.5,279,565).

Klein et al show a tissue dissector (figures 1-2, 3b) having the limitations as recited in the above listed claims, including: an elongated cannula (20), a distal tip has a tapered outer walls converting to a blunt end (at 26), a solid dilating element (52,54) disposes on the cannula, where the dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal tip, and where element 52,54 is capable of removably mounted on the cannula, where the device further comprises a mating slot (56) for removably positioning the dilating element on the cannula, and where the device further has an endoscope (38) sized to fit within a lumen of the cannula, and the distal tip is capable of being dissected with the endoscope, where the dilating element is an oval shape, and where the cross sectional dimension of the dilating element can be two times larger than the cross sectional dimension of the distal end of the cannula (fig.2), where the dilating element can be compressible. Note that the procedure in figure 2 discloses a spacer length of cannula(the length between element 52 and 56 is considered a spacer length) of

Art Unit: 3734

between 14-28 mm disposed between a distal end of the dilating element and a proximal end of the distal tip

Claim 52 is rejected under 35 U.S.C. 102 (e) as being anticipated by Andrese (U.S. 6,015,423).

Andrese discloses a tissue dissector (figures 1-2) having the limitations as recited in the above listed claims, including: an elongated cannula (11), a distal tip (11a) has a tapered outer walls converting to a blunt end, a solid dilating element (14) disposes on the cannula, where the dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal tip

Allowable Subject Matter

2. Claims 34-35,37-44 and 46-50 are allowed.

Claims 54 and 64 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose or suggest a tissue dissector comprising a distal tip having tapered outer walls converging to a blunt end, where a length of screw threads positioned on an outer surface of a cannula through tissue, where a dilating element disposed on the cannula proximal to the distal tip, the dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal end of the cannula and greater than the cross sectional dimension of the distal tip, and where the dilating

Art Unit: 3734

element further comprises a threaded bore hole formed in the dilating element for engaging the length of screw threads on the cannula for removably positioning the dilating element on the cannula. As to claim 43, the prior art does not teach the invention including, inter alia, a tissue dissector kit having a cannula and a tapered distal tissue dissecting tip disposed on a distal end. The cannula incorporates a locking mechanism proximal to the distal tip to which a mating lock of each of a plurality of dilating element attaches. Each different dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal end of the cannula and the distal tip, and where different dilating elements mounted one at a time on the cannula and formed cavities of differing dimensions.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

3. Applicant's arguments filed 11/7/2005 have been fully considered but they are not persuasive. In response to applicant's argument that Klein reference does not disclose a solid dilating element of fixed outer dimension disposed on a cannula. As claim 52 is currently written, it can be interpreted broadly that the Klein reference at least discloses in fig.2, a solid dilating element 52,54 disposed on a cannula 20, where elements 52,54 have sufficient rigidity material to provide an expansion force against the vessel wall at the treatment site (see col. 8, lines 9-14). The same argument will apply to Andrese reference. As claim 52 is currently written, it can be interpreted broadly that the Andrese reference at least discloses in figs. 1-2, a

Art Unit: 3734

solid dilating element 14 disposes on a cannula 11. In the response to applicant's argument that Klein does not disclose a dilating unit removably mounted on the cannula distal end. The examiner, respectfully, disagrees. The phrase "removably" in the claim is broad enough to mean that elements 52,54 can freely move radially outward (see col. 8, lines 19). Therefore, they can be considered as disassembled which are capable of removably mounted on the cannula 20. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims noted.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

Art Unit: 3734

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen
Examiner
Art Unit 3734



VN
8/15/2006



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER